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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 3rd January, 2020

No. 13/1/9697-HII(2)-2019/164.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 44/2015, dated 20.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DEEPAK BAWA S/O SHRI MADAN LAL BAWA R/O FLAT NO. 608, GROUP HOUSING SOCIETY NO. 103, SECTOR 20, PANCHKULA (Workman)

AND

1. CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LIMITED, SCO NO. 121-122, SECTOR 17-B, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.

2. CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LIMITED, SCO NO. 121-122, SECTOR 17-B, CHANDIGARH (Management)

Present.—Shri D.R. Kaith, representative for the workman.

Shri Vishnu Kaushik, representative for the management.

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was duly selected and appointed as Junior Engineer (Civil) as per appointment letter dated 08.04.2008. Since then the workman was performing his duties with diligence and devotion throughout and was never found in-wanting in the performance of duties till 03.12.2014. Work against which the workman was appointed was perennial nature and was in existence when the management illegally terminate the services of the workman inspite the recommendation of the Executive Engineer for extension of his services. At the time of termination of his the workman had completed 240 days of service continuously in 12 calendar months so it was mandatory for the management to comply with the provisions of Section 25-F of the ID Act. The management had neither served a notice or paid pay in lieu of notice nor paid retrenchment compensation before terminating the services of the workman. The management had not complied with the provisions of Section 25-N of the ID Act as more than 500 persons are working under the management. Work of the workman was in existence and post was never abolished by the competent

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authority till date. There is also violation of Rule 77 and 78 of the Industrial Disputes Rules as the management had started process of appointing fresh person in place of workman without giving chance of reemployment to the workman. Termination is also illegal and in violation of CITCO Employees Services Regulation. The appointment of the workman was through proper channel and against existing work. The appointment of the workman was under Chapter 8 and he has also completed probation period successfully as per Chapter 9. Services of the workman were deemed to be regularised after completion of two years of continuous service and the workman was regular employee when his services was terminated without notice and without inquiry. Act & conduct of the management is in violation of Section 25-T of the ID Act as the workman was being treated contractual employee for long period of more than six years and lastly his services were terminated without any legal and valid ground without complying with the provisions of the ID Act. Acts & conduct on the part of the management amounts to unfair labour practice as defined in the Fifth Schedule of the ID Act at serial No.6 and 10. The workman requested the management to continue him in service after 03.12.2014 as per his representation dated 08.12.2014 but till date the management had not accepted the request of the workman. The workman is unemployed after his illegal dismissal. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages along with interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement that the workman was appointed as Junior Engineer (Civil) on contract basis (renewable annually) initially for a period of one year on lump sum payment of ₹ 11,100/- per month *vide* letter dated 08.04.2008 as per terms & conditions mentioned therein. There was specific mention in the appointment letter that the service contract would stand automatically terminated if it was not extended and as per para 21 of the appointment letter, the workman would be required to give an affidavit stating that he would not claim absorption in the corporation as the post against which he had been appointed was purely on contractual basis and for a specific period. The workman accepted the terms & conditions of the appointment letter and submitted his joining report on 15.04.2008. The contractual period of the workman was extended from time to time as per requirements of the management. The workman submitted his resignation on 08.08.2011 (F.N.), which was accepted by the management *vide* its office order dated 30.09.2011. The workman again submitted an application dated 17.06.2011 against the advertisement published in the newspaper, published by the management for the post of Junior Engineer (Civil) on contract basis in the corporation. After expiry of the services contract period, the management *vide* its letter dated 03.12.2014 informed the workman that his contract period was not extended with effect 26.11.2014 and his dues were paid to him. The workman was relieved from his duties on 04.12.2014 (FN) by the management *vide* office order dated 04.12.2014 due to non-existence of his contract period with effect from 26.11.2014. So the question of completing the 240 days and compliance of Section 25-F of the ID Act does not arise. The contract period was not extended further in view of workload staff strength of the management and non-renewal of contract period does not amount to retrenchment. The representation of the workman was considered and fact due considerations, the services contract period was not extended further due to workload staff strength of the management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman tendered into evidence vacancy notification issued by the management and closed the evidence. On the other hand, the management examined Smt. Pushp Lata Kaushal—Senior Assistant (P&A) Branch as MW1. Learned representative for the management closed the evidence.

6. I considered the written arguments submitted by learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same learned representative for the workman examined the workman as AW1, who deposed that he was duly selected and appointed as Junior Engineer (Civil) as per appointment letter dated 08.04.2008 and after obtaining medical fitness from the Principal Medical Officer, Sector 16, Chandigarh he submitted joining on 15.04.2008 and since then he was performing his duties with diligence and devotion throughout and was never found in-wanting in the performance of his duties till 03.12.2014. The work against which he was appointed was perennial in nature and was in existence when the respondent illegally in spite of recommendation of the Executive Engineer for extension of his services on the basis of need and existence of work at that time. Copies of proof of service are Exhibit 'W1' and 'W2'. He further deposed that at the time of his illegal termination he had completed more than 240 days continuously in twelve calendar months so it was mandatory for the management to comply with the provisions of Section 24-F of the ID Act. The management had neither served a notice or paid pay in lieu of notice period nor paid retrenchment compensation before terminating his services. The management had also not complied with the provisions of Section 24-N of the ID Act which are mandatory as more than 500 persons are working under the management. The management had also given any reason for terminating his services in spite of the fact that work was in existence and post was never abolished by the competent authority till date. The management had again advertised the post as per advertisement dated 23.08.2017. Copy of the same is Exhibit 'W3'. He further deposed that there is also violation of Rule 77 and 78 of the Industrial Dispute Rules as the management had started process of appointing fresh persons in his place without giving chance of reemployment to the workman. Termination is also illegal and in violation of CITCO Employees Service Regulation as his appointment was through proper channel, against existing work and was given joining on production of medical fitness certificate and he was working continuously for more than six years. His appointment was under chapter 8 and he had also completed probation period successfully as per Chapter 9 and his services were deemed to be regularised after completion of two years of continuous service and he was regular employee when his services were terminated without notice and without any inquiry. He further deposed that act & conduct of the management is in violation of Section 25-T of the Industrial Disputes Act as he was being treated contractual employee for long period of more than six years though there is no provision of appointment on contract basis in the rules and lastly his services were terminated without any legal & valid ground, without complying with provisions of the ID Act as well as service rules. He requested the management to continue him in service after 03.12.2014 as per his representation dated 08.12.2014 but till date the management had not accepted his request. Copy of representation dated 08.12.2014 is Exhibit 'W4'. He is un-employed after his illegal dismissal.

8. It is submitted in the written arguments filed by learned representative for the workman that the management invited the application for the post of Junior Engineer and the workman was duly selected and appointed after due selection. He joined the services of the management on 08.04.2008 against the vacant post. The workman had been working as such 03.12.2014 and had completed 240 days of service in twelve calendar months. It is further submitted that after illegal termination of services of the workman the management invited applications for appointment of fresh candidate for the same post against which the workman was working. As per Rule 77 of the Industrial Disputes Rules, the management is duty bound to maintain the seniority list of retrenched employee and to call the senior most employee out of the said seniority list for appointment when the post fall vacant and no post can be filled up by appointing fresh one without giving change to the retrenched employee. Again the management had invited applications for two posts of Junior Engineer. Reliance is placed on citation **M/s Lumax Industries Limited Versus Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaraon & Another, 2014(1) SCT 225 (P&H); Tapash Kumar Paul Versus BSNL & Another, 2014(3) SCT 106 (SC); The Chandigarh Industrial & Tourism Development Corporation Limited & Another Versus The Presiding Officer, Labour Court & Others, 2014(3) SCT 395; Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited, 2014(11) SCC 85, K. S. Ravindran Versus Branch Manager, New India Assurance Co. Limited, 2015(7)**

SCC 222, Chief Administrator, Haryana Urban Development Authority, Panchkula *Versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, 2002(3) SCT 14; Balihar Singh & Others *Versus* Panjab University & Others, 2002(3) RSJ 393 (P&H) and Dy. General Manager *Versus* General Secretary, Daily Wages Bank Employees' Association, 2017(1) CLR 862 (MP) and prayed for answering the reference in favour of the workman and against the management.

9. On the other hand, learned representative for the management has examined Smt. Pushp Lata Kaushal – Senior Assistant (P&A) Branch as MW1, who deposed that she is working as Senior Assistant with the management and fully conversant with the facts of the present case. She is authorised to depose in the present case *vide* authority letter dated 29.05.2019, which is Exhibit 'R1'. She further deposed that the present reference is not maintainable and without any jurisdiction as the present subject matter does not fall within the ambit of Section 2-A of the ID Act. As per interview held on 27.02.2008, the petitioner-workman was appointed as Junior Engineer (Civil) on contract basis (renewable annually) initially for a period of one year on lump sum payment *vide* letter dated 08.04.2008. Copy of the same is Exhibit 'R2'. She further deposed that it was specifically mentioned in the said appointment letter that the service contract would stand automatically terminated if it was not extended and as per para 21 of the appointment letter, the petitioner-workman would be required to give an affidavit stating that he would not claim absorption in the corporation as the post against which he had been appointed on contractual basis and for a specific period. The petitioner-workman accepted the terms & conditions of the appointment letter and submitted his joining report on 15.04.2008 Exhibit 'R3' along with requirement documents i.e. joining report and service agreement Exhibit 'R4'. She further deposed that the contractual period of the petitioner-workman was extended from time to time as per requirement of the management and he submitted his resignation on 08.08.2011 Exhibit 'R5', which was accepted by the management. She further deposed that the petitioner-workman again submitted an application dated 16.06.2011 Exhibit 'R6' against the advertisement published in the newspaper for the post of Junior Engineer (Civil) on contract basis. The management conducted interview on 15.07.2011 and on the basis of the same, offered the post of Junior Engineer (Civil) to the petitioner-workman purely on contract basis (renewable annually) initially for a period of one year on lump sum payment as per terms & conditions mentioned in the appointment letter dated 28.07.2011 Exhibit 'R7'. She further deposed that the petitioner-workman accepted the terms & conditions of his appointment letter and submitted his joining report dated 08.08.2011 Exhibit 'R8' and submitted service agreement for the period from 08.08.2011 to 07.08.2012 *vide* his letter dated 28.09.2011 Exhibit 'R9'. The contract period of the petitioner-workman was extended from time to time as per requirement of the management and submitted affidavit and service agreement for fixed period on every extension of service contract period. Last he was appointed on the contract basis from 26.11.2013 to 25.11.2014 *vide* letter dated 06.12.2013 Exhibit 'R10'. The petitioner-workman accepted the terms & conditions of his appointment and submitted his joining report dated 26.11.2013, copy of which is Exhibit 'R11' and also submitted his service agreement *vide* his letter dated 12.12.2013 Exhibit 'R12'. She further deposed that after expiry of service contract period the management *vide* its letter dated 03.12.2014 Exhibit 'R13' informed the petitioner-workman that his contract period was not extended with effect from 26.11.2014 and his dues were paid to him and he was relieved from his duties on 04.12.2014 *vide* office order dated 04.12.2014 Exhibit 'R14'. After relieving the petitioner-workman requested for issuance of his experience certificate *vide* his application dated 04.02.2015 Exhibit 'R15', which was issued *vide* letter dated 20.02.2015 and 23.02.2015, copy of which is Exhibit 'R16'. She further deposed that non-renewal of contract does not amount to retrenched as defined under Section 2(o)(bb) of the ID Act.

10. Learned representative for the management in reply to the written arguments submitted by learned representative for the workman, submitted that as per interview held on 27.02.2008 the workman was appointed as Junior Engineer on contract basis initially for a period of one year on lump sum payment *vide* letter dated 08.04.2008. The workman accepted the terms & conditions of appointment letter and submitted the joining report and service agreement. He himself resigned on 08.08.2011 which was accepted. It is further submitted that the workman again submitted an application against the advertisement published in the newspaper for the post of Junior (Civil) on contract basis in the corporation and after expiry of the contract period, the management informed the workman that his contract period was not extended so the present reference is not maintainable

as the subject matter does not fall within the ambit of Section 2-A of the ID Act. The management has placed reliance on **District Programme Co-ordinator, Mahila Samkhyia & Another Versus Abdul Kareem & Another, Civil Appeal No. 5815 of 2008** decided by the Hon'ble Supreme Court on 18.09.2008; **Haryana State Electronics Development Corporation Limited Versus Mamni, Civil Appeal No. 2410 of 2006** decided by the Hon'ble Supreme Court on 02.05.2006; **Rajesh Yadav Versus State of Bikaner & Jaipur, Civil Writ Petition No. 6508 of 1999** decided by the Hon'ble Rajasthan High Court on 27.07.2007 and **Institute of Home Economics Versus Shri Prem Pal, W.P. (C) No. 8502 of 2011** decided by the Hon'ble Delhi High Court on 01.03.2018 and prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the sides, it is nowhere disputed that the workman was selected and appointed as Junior Engineer (Civil) as per appointment letter dated 08.04.2008 and since then he was performing his duties. As per averment of the workman he was terminated by the management but the management is stating that the contractual period of the workman came to an end after expiry of contract. From the perusal of the documentary evidence on record, I find that the management has duly placed on record appointment letter of the workman dated 08.04.2008 Exhibit 'R2' vide which the workman was appointed as Junior Engineer (Civil) on contract basis, renewable annually. Exhibit 'R3' is joining letter of the workman dated 16.04.2008 whereby he accepted the terms & conditions of the contract appointment. Exhibit 'R4' is service agreement of the workman dated 16.04.2008 for the period 15.04.2008 to 14.04.2009, Exhibit 'R5' is resignation dated 08.08.2011 from the post of Junior Engineer tendered by the workman. Exhibit 'R6' is application for the post of Junior Engineer (Civil) on contract basis submitted by the workman. Exhibit 'R7' is the appointment letter of the workman, dated 28.07.2011, for the post of Junior Engineer on contract basis. Exhibit 'R8' is joining letter of the workman dated 08.08.2011 for the post of Junior Engineer on contract basis after accepting the terms & conditions of the contract appointment, Exhibit 'R9' is the service agreement of the workman dated 28.09.2011 for the period 08.08.2011 to 07.08.2012, Exhibit 'R10' letter dated 06.10.2013 whereby the appointment of the workman as Junior Engineer (Civil) on contract basis was further extended for another one year from 26.11.2013 to 25.11.2014, Exhibit 'R11' is joining report dated 26.11.2013 submitted by the workman. Exhibit 'R12' letter dated 12.12.2013 whereby the workman had submitted the service agreement for fixed period i.e. from 26.11.2013 to 25.11.2014, Exhibit 'R13' is letter dated 03.12.2014 whereby the workman was informed that the contract period has not been extended with effect from 26.11.2014, Exhibit 'R14' is office order dated 04.12.2014 in which it is clearly mentioned that due to non-extension of the contract with effect from 26.11.2014 the workman was relieved from his duties from 04.12.2014. Exhibit 'R15' is letter dated 04.12.2015 whereby the workman applied for issuance of experience certificate, Exhibit 'R16' is the experience certificate issued to the workman with regard to his employment as Junior Engineer (Civil) on contract basis. Exhibit 'R17' list of candidates for written examination for recruitment for the post of Junior Engineer (Civil), Exhibit 'R18' is attendance sheet of the written examination for the recruitment for the post of the Junior Engineer (Civil). Meaning thereby it is crystal clear that the workman submitted an application in response to advertisement published in the newspaper and the workman was appointed on contract basis on the post of Junior Engineer (Civil) and his appointment was extended from time to time for one year. Admittedly, after expiry of contract he was relieved from duty on 04.12.2014 as the contract period was not extended from 26.11.2014. Further this fact is crystal clear from the cross-examination of the workman himself admitted that it is correct that on 08.04.2008 he was appointed as Junior Engineer Civil on contract basis with the management and the said contract was to be annually renewed and he had submitted the resignation dated 08.08.2011 voluntarily without any pressure. He also admitted that regular Junior Engineer Civil is already working on the said post. He further admitted that his service agreement is for fixed period i.e. annually and every year he had to file new service agreement with the management on the renewal of the contract as per the direction of the management and with effect from 25.11.2014 his services agreement was not renewed by the management. He further admitted that it is correct that he had worked upto 08.12.2014 and he had received the payment from the management for the said period and the management had never issued any termination to him.

12. Further reliance is placed on citations **District Programme Co-ordinator, Mahila Samkhya & Another Versus Abdul Kareem & Another** (*supra*) and **Haryana State Electronics Development Corporation Limited Versus Mamni** (*supra*) wherein Hon'ble Supreme Court has also observed that termination of the services of the workman as a result of the non-renewal of the contract employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. Further reliance is made on citation **Rajesh Yadav Versus State of Bikaner & Jaipur, Civil Writ Petition No.6508 of 1999** decided by the Hon'ble Rajasthan High Court on 27.07.2007 and **Institute of Home Economics Versus Shri Prem Pal, W.P. (C) No.8502 of 2011** decided by the Hon'ble Delhi High Court on 01.03.2018

13. In the light of authorities and discussion made above, the present case is not a case of termination under Section 2-A of the ID Act rather it is a case of non-renewal of contract under Section 2(o)(bb) of the ID Act. Authorities relied upon by the workman are distinguishable from the facts of the present case. Accordingly, this issue is decided against the workman and in favour of the management.

RELIEF :

14. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20.11.2019.

(Sd.) . . . ,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 7th February, 2020

No. 13/1/9705-HII(2)-2019/2266.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 49/2015, dated 10.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

VARINDER KUMAR S/O SHRI SUGAN CHAND, C/O #2480, SECTOR 28-C, CHANDIGARH (Workman)

AND

1. UNION TERRITORY CHANDIGARH THROUGH ADVISER TO THE ADMINISTRATOR, UNION TERRITORY CHANDIGARH, UNION TERRITORY SECRETARIAT, DELUXE BUILDING, SECTOR 9-D, CHANDIGARH.

2. SECRETARY SPORTS, UNION TERRITORY CHANDIGARH, UNION TERRITORY SECRETARIAT, DELUXE BUILDING, SECTOR 9-D, CHANDIGARH.

3. DIRECTOR SPORTS, UNION TERRITORY CHANDIGARH, SECTOR 42, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was registered with the Regional Employment Exchange, Union Territory Chandigarh and his registration card number was 6695/2001. In the month of November 2007, management No.3 engaged the workman for 89 days on purely temporary basis on DC rates paid out of the contingency fund only for four hours as part-time worker (Sweeper) in a day. Although the workman was engaged as Sweeper on DC rates yet no appointment was issued him. Management No.3 continues to engage the workman till 28.10.2013 and he was paid wages on DC rates for the work done by him till that date. On 28.10.2013 the workman was given verbal order not to come after 28.10.2013. Before terminating the services of the workman verbally, he was not given any notice by management No. 3 and he was not paid retrenchment compensation in terms of Section 25-F of the ID Act. The persons junior to the workman are still working with management No. 3. During the tenure of his service, the workman was allotted CPF No. PB-Chandigarh-38511 and his account number was 0000009, which indicates that he was duly employed by management No.3 and he performed his services till his termination by verbal order dated 28.10.2013. The workman gave a demand notice to management No.3 with a copy to the Assistant Labour Commissioner, Union Territory Chandigarh for necessary action in the matter. Management No. 3 *vide* Memo No. 240, dated 09.01.2015 replied to the Assistant Labour Commissioner-cum-Conciliation Officer, to the demand notice admitting that the workman was engaged on DC rates paid out of the contingency funds and worked for four hours as part-time worker (Sweeper) in a day and no appointment letter was issued to him. It is further admitted that no charge sheet was served, no charges were framed, no departmental inquiry was made and the workman was not punished or was given any hearing thereto, which clearly indicates that management No.3 has violated the provisions of Section 25-F of the ID Act and other related labour laws. The conciliation proceeding were held in the office of the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh in response to the demand notice but no amicable settlement could be made within stipulated period for conciliation of the dispute. Ultimately, it is prayed that termination order of the workman be set aside and the workman be taken back in service with consequential benefits.

3. The management contested the case of the workman and filed written statement that the name of the workman was sponsored by Employment Exchange, Union Territory Chandigarh. The workman was engaged as part time worker (Sweeper) on DC rates, for 4 hours daily, in May 2008 for 89 days. No appointment letter was issued to the part time workers. The workman had worked from time to time till October, 2013. During formation of draft 7th Five Year Plan (2012-2017) & annual plan 2013-2014 approved by the competent authority and as per the order of the Home Department *vide* No.IH(7)-2007/4892, dated 13.03.2007 for the regular and adequate up keep of stadium, a provision to get the said work be attended through service provider. A provision of ₹ 10.00 lacs each financial year had been projected outlay. The tender was invited and finalized and the contract was given to L1 firm i.e. M/s Good House Keeping Agency for providing the services of support allied and sanitation and horticulture staff and the process for engaging part-time workers were stopped from the date of finalization of tender i.e. 06.12.2013. No person has been engaged by the department after adopting the outsourcing process. All the work i.e. sanitation and horticulture was given to the service provider. EPF number has been issued as per rules of the EPF Department. The workman had served a demand notice and reply to the said notice was also filed by the management before the Assistant Labour Commissioner. The management had not violated any provisions of the ID Act. The workman was not terminated by the department rather process of the allied work was given to the outsourcing agency for providing the service of support, allied and sanitation and horticulture staff and the process for providing part time workers was stopped from the date of finalization of tender i.e. on 06.12.2013, for deployment of workman on outsource. After the completion of process of outsourcing, Shri Varinder Kumar was engaged by the service provider for full time i.e. 08 hours, daily, in the Art College, Chandigarh and he worked for two months and thereafter he refused to do the job. Ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman field replication reiterating the averments of his case and denied the averments made in the written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Smt. Saroj as AW2 and closed the evidence. On the other hand, the management examined Dr. Mahender Singh – Joint Director Sports as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same learned representative for the workman has examined the workman as AW1, who deposed that he was registered with the Regional Employment Exchange, Union Territory Chandigarh and was engaged in the month of November 2007 by management No.3 for 89 days on purely temporary basis on DC rates paid out of the contingency fund only for four hours as part-time worker (Sweeper) in a day but no appointment letter was issued to him. Management No.3 continues to engage the workman till 28.10.2013 and on 28.10.2013 he was verbally ordered not to come after 28.10.2013. Before terminating the services of the workman, he was not given and not paid retrenchment compensation in terms of Section 25-F of the ID Act. Juniors to the workman are still working with management No.3.

8. The workman also examined Smt. Saroj as AW2, who deposed that the workman is known to her in the month of November 2007, when the workman was engaged for 89 days on purely temporary basis on DC rates. Her services as part time worker were desired to be changed to the service through a service provider so he approached the Presiding Officer, Labour Court, Union Territory Chandigarh *vide* reference No. 163 of 2002 which was decided in her favour and the management has challenged the award in the Hon'ble Punjab & Haryana High Court. As per her information, in the month of October 2013 the workman was given verbal order not to come after 28.10.2013 and before terminating his services no retrenchment compensation was paid.

9. Learned representative for the workman has argued that management No.3 engaged the workman on temporary basis on 89 days on purely temporary basis on DC rates in the month of November 2007. On 28.10.2013, the workman was given verbal order not to come after 28.10.2013 whereas junior to the workman was still working with management No.3. No charge sheet was issued and no departmental inquiry was conducted by the management, so management No.3 violated the provisions of Section 25-F of the ID Act. He prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, the management examined Dr. Manmohan Singh – Joint Director Sport as MW1, who deposed that name of the workman was sponsored by the Employment Exchange and he was engaged as part time worker (Sweeper) on DC rates for four hours daily in May 2008 for 89 days and he had worked from time to time till October 2013. During the formation of draft 7th Five Years Plan (2012-17) and annual plan 2013-14 approved by the Home Department *vide* No.IH(7)-2017/4892, dated 13.03.2007 for the regular and adequate up keep of stadium, a provision to get the said work be attended through service provider. Tender was invited and finalized and the contract was given to L1 firm i.e. Good House Keeping Agency for providing the services of support allied and sanitation and horticulture staff and the process of engaging part time workers were stopped from the date of finalisation of tender on 06.12.2013. Copy of letter dated 13.03.2007 is Exhibit 'M2'. He further deposed that the services of the workman were not terminated by the management

as the process of the allied work was given to the outsourcing agency for providing the service of support, allied and sanitation and horticulture staff and the process of providing part time workers was stopped from the date of finalisation of tender on 06.12.2013 for deployment of the workman on outsource. After completion of process of outsourcing the workman was engaged by the service provider for full time i.e. 8 hours daily in the Art College, Chandigarh and he worked there for two months and thereafter he refused to do the job.

11. Learned representative for the management has argued that the workman was sponsored by the Employment Exchange, Union Territory Chandigarh and was engaged as part time Sweeper. During the formation of 7th Five Year Plan 2012-17 and annual plan approved by the Home Department, a provision to get the work of up-keeping of stadium attended through service provider and the provision of rupees ten lac has been projected outlay. The tender was invited and finalised and thereafter no person has been engaged by the management for sanitation and horticulture work. He prayed for dismissal of the present industrial dispute.

12. After giving careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that initially the workman was engaged as Sweeper on DC rates for four hours daily for 89 days in the year 2008 and he worked with the management till 28.10.2013. As per assertion of learned representative for the workman his work was satisfactory and he was suddenly denied to join the duties after 28.10.2013. No notice has been issued and no departmental inquiry has been conducted his termination of his service but learned representative for the management has argued that as per 7th Five Year Plan (2012-17) and annual plan 2013-14 approved by the Home Department, the provision to get work outsource was provided so no person has been engaged by the department after adopting the outsource process so the workman is not entitled for reinstatement and there is no termination on the part of the management. But after the perusal of the evidence led by both the parties, admittedly no appointment letter was issued to the workman and the workman himself stated in his cross-examination that he do not know whether Chandigarh Administration had outsourced the said post. The workman has placed on record Mark 'A' information obtained under the Right to Information Act, 2005 and copy of attendance sheet whereas the management has placed on record copy of guidelines for outsource of service activities issued by the Home Department but there is nothing on file when the outsource agency guidelines have been adopted by the department and which outsource agency has been engaged by the department to outsource the workman. Admittedly the workman had worked till October 2013 and no notice has been issued by the management to the workman. MW1 during the cross-examination had admitted that the workman continued to work and was duly paid till October 2013. No compensation was whatsoever was given to the workman before terminating his service. But admittedly the post of the workman has been outsourced by the management so under these circumstances reinstatement of the workman is not possible. Considering the facts and circumstances of the case, ends of justice would be met if the workman is compensated in lump sum amount of ₹ 10,000/-. Accordingly this issue is decided in favour of the workman and against the management.

RELIEF :

13. In the light of findings on the issue above, this industrial dispute is partly allowed. The workman is entitled for lump sum compensation of ₹ 10,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 10.12.2019.

(Sd.) . . . ,
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 7th February, 2020

No. 13/1/9706-HII(2)-2019/2263.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 44/2016, dated 13.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

ROOP CHAND, HOUSE NO. 12, VILLAGE MAKHAN MAJRA, UNION TERRITORY CHANDIGARH SINCE DECEASED THROUGH HIS WIFE SMT. SUNITA (Workman)

AND

STEEL PRODUCT OF INDIA, PLOT NO. 162, INDUSTRIAL AREA, PHASE-II, CHANDIGARH, THROUGH ITS PROPRIETOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Helper by the management of M/s National Industrial Corporation in the year 1984 and he remained in uninterrupted employment upto 1990 when he was transferred to M/s Steel Product India with continuity of service and with all the benefits intact. He remained in uninterrupted employment upto 07.08.2015 when his services were illegally & wrongly terminated by refusing of work. The workman was drawing ₹ 8,500/- per month as wages. Due to T.B. and Sugar the workman was on authorized leave from 30.01.2015 to 07.08.2015. The workman was under the treatment of ESI Hospital and dispensary and was allotted ESI No.3025200. Medical certificate along with leave application were submitted to the management by the workman regularly. On 08.08.2015 the workman went to attend his normal duty after getting the fitness certificate from the Doctor but he was refused work by the management without assigning any reason and notice. For his reinstatement the workman lodged a complaint dated 17.08.2015 with the Labour Inspector, Union Territory Chandigarh. The Labour Inspector fixed a number of dates for an amicable settlement but the representative of the management did not appear on any date fixed for settlement. The workman served a demand notice dated 22.09.2015 upon the management but the management did not reply the demand notice and also did not take the workman back on duty before the Conciliation Officer, Union Territory Chandigarh. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Action of the management is illegal, wrong, motivated, against the principle of natural justice and unfair practice. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages as he remained unemployed during the period i.e. from the date of termination to till date with all attendant benefits and without any change in his service conditions.

3. The management contested the case of the workman and filed written statement that the workman was appointed in the management on 01.08.1995. The workman was only working with M/s Steel Product India from 01.08.1995. He had given the intimation only for two months but he himself did not gave information to the management about the next 3-4 months of leave. The workman did not join the duty even after 5-6 months nor he gave any intimation regarding his leave. The workman was duly compensated ₹ 8,000/- on 10.08.2015. No demand notice was ever received by the management. The management only came to know about the same from the Assistant Labour Commissioner. There is no violation of law of natural justice by the management. The workman had already received as full & final settlement on 10.08.2015. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed the replication reiterating the averment of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. During the pendency of the present industrial dispute the workman expired as such the application for impleading the LR of the deceased workman was filed, which was allowed and Smt. Sunita—Widow of the workman was ordered to be impleaded as legal heir of the deceased workman by the then Presiding Officer of this Tribunal/Court. In support of the case, the widow of the deceased workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Nitin Gupta—Partner/Manager as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and in order to prove the same learned representative for the workman has examined widow of the workman as AW1, who deposed that she is legally wedded wife of the deceased workman died on 15.05.2017. Initially her husband was appointed by the management of M/s National Industrial Corporation as Helper in the year 1984 and he remained in the uninterrupted employment upto 1990. He was transferred to M/s Steel Product of India with continuity of service and with all the benefits intact. Her deceased workman remained in the service upto 08.08.2015 when his services were illegally and wrongly terminated by refusing work. He was drawing ₹ 8,500/- per month as wages at the time of termination. She further deposed that her husband was covered under the ESI scheme and he was allotted insurance No.3025200. He was suffering from TB and Sugar and was on authorized leave from 30.01.2015 to 07.08.2015 and was getting medical treatment from the ESI Hospital and dispensary. Medical certificate along with leave applications were submitted by her husband. She further deposed that on 08.08.2015 her husband went to attend his normal duty along with fitness certificate issued by the ESI Doctor but he was refused work by the management without assigning any reason & notice.

8. Learned representative for the workman has argued that the workman was appointed by M/s National Industrial Corporation as Helper in the year 1984 and remained in the uninterrupted employment 1990 and he was transferred to M/s Steel Product of India with continuity of service and with all benefits intact. The workman remained in service upto 08.08.2015 when his services were illegally and wrongly terminated by refusing work. He further argued that the workman was covered under ESI scheme and he was suffering from TB and sugar. He was on authorized leave from 30.01.2015 to 07.08.2015 as he was getting medical treatment from ESI hospital and on 08.08.2015 he went to attend his normal duty along with fitness certificate issued by ESI he was refused work by the management without assigning any reason. He further argued that refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to the workman. Action of the management was illegal, wrong and against the principles of natural justice. He prayed for allowing of the present industrial dispute.

9. On the other hand, learned representative for the management examined Shri Nitin Gupta—Partner/Manager as MW1, who deposed that the workman was appointed with the management on 01.08.1995 as Helper. The workman was suffering from TB and sugar and remained absent from the work on the pretext that he is taking treatment for the same. The workman had given intimation for two months leave but remained absent from the work for six months without any intimation to the management. The workman approached the management on 10.08.2015 and himself left the job by saying that he is weak and now his body does not allow

him to work so the workman was duly compensated ₹ 8,000/- on 10.08.2015 as full & final settlement towards the workman. He further deposed that the workman was habitual absentee. The management did not terminate the services of the workman but the workman himself left the services as he was weak and suffering from TB and sugar and his body does not allow him to work.

10. Learned representative for the management has argued that no ground is made out to allow this issue as the workman had himself left the job due to his ill-health. He did not work continuously with the management. He was habitual absentee. Since the workman has left the services of his own so question of termination of his services does not arise. He prayed for dismissal of the present industrial dispute.

11. After considering the rival contentions of both the sides, I find that admittedly the deceased workman was appointed as Helper by the management of M/s National Industrial Corporation in 1984 and remained in un-interrupted employment upto 1990. Thereafter the workman was transferred to M/s Steel Product of India. Admittedly the deceased workman was patient of TB and sugar. The ground taken by the workman that after availing the medical leaves, he joined the duties but he was refused work by the management. On the other hand, plea of the management is that he himself left the job due to ill-health. From the perusal of the file it is crystal clear that no documentary evidence has been led by the management that they have given any notice to the deceased workman for his absence from duty. No inquiry has been conducted by the management against the deceased workman. Moreover oral version of the management that he did not turn up does not inspire the confidence. Moreover, it is admitted by MW1 in his cross-examination that the workman was on leave from 30.01.2015 to 07.08.2015 and submitted his medical certificate issued by ESIC Hospital. He cannot give any proof that the work was refused to the workman. There is no evidence on file that the workman himself refused to join duties. So it is proved on record that the services of the workman were terminated without issuing any notice, inquiry and retrenchment compensation. There is violation of provisions of the ID Act and principles of natural justice on the part of the management. Since the workman had expired so no reinstatement can be possible. As regards the legal benefits is concerned the widow of the workman is entitled to receive the compensation as the workman had worked with the management from 1984 to 2015 for about 30 years and taking salary of ₹ 8,500/- per month. Ends of justice would be met if the widow of the workman is compensated in lump sum amount of ₹ 1,35,000/-. Accordingly this issue is decided in favour of the workman and against the management.

RELIEF :

12. In the light of findings on the issues above, this industrial dispute is partly allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 13.12.2019.

(Sd.),

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 13th February, 2020

No. 13/1/9713-HII(2)-2019/2627.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 9/2016, dated 18.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

SANDEEP SINGH S/O SHRI LACHHMAN SINGH, R/O HOUSE NO. 232, SECTOR 51-A, UNION TERRITORY, CHANDIGARH (Workman).

AND

PUNJAB WATER RESOURCES MANAGEMENT & DEVELOPMENT CORPORATION LIMITED, SCO NO. 29, SECTOR 26-D, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he joined the services of the management with effect from 01.06.2013 and worked continuously without any interruption or break in the services till 31.01.2015 when the management retrenched/terminated his services by passing verbal orders of termination. The workman is Matriculate from Punjab School Education Board. He was working as Chowkidar/Security Guard. At the time of his retrenchment/termination, he was drawing wages as per DC rates applicable in Union Territory, Chandigarh, i.e. ₹ 8,857/- per month. The workman performed his duties up to the entire satisfaction of the management and he was never issued any show cause notice, warning, charge sheet or any other memo to question his work and conduct throughout his service period of 2 year 10 months. At the time of his appointment, the workman was not issued appointment letter by the management. The management did not issue ever designation letter. He was not enrolled under ESI Scheme and Provident fund Scheme. The management was not maintaining proper wages registers and attendance registers, but the workman was paid wages regularly. The workman was raising the issue of regularization of his services as there is sanctioned regular post of Artificer under the management. He was also raising the issue of his enrolment under ESI and Provident fund Schemes. The workman also requested the management to maintain the proper registers of his attendance and payment of wages. Instead of regularization of his services and implementation of the provisions of Labour laws applicable for him, the management started threatening the workman to stop raising the issue of implementation of Labour laws etc. otherwise he will be thrown out of the services of the organization. On 01.02.2015 the workman reached the venue of his duties but he was not allowed to resume his duties and was verbally told that his services are no more required by the management. The verbal order of retrenchment / termination of his services is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently *mala fide* on the grounds that the workman performed his duties for 2 year and 10 months continuously and without any interruption or break in the services/duties so he was entitled for notice or retrenchment / notice pay and retrenchment compensation. The management neither served notice of retrenchment nor paid notice pay and retrenchment compensation at the time of passing verbal orders for the retrenchment of his services. The retrenchment order passed against the workman is in violation of Section 25-F of the ID Act, 1947. At the time of his retrenchment / termination, the juniors were retained in the services so verbal order of retrenchment / termination is in violation of Section 25-G of the ID Act. The workman was demanding implementation of Labour Laws to regulate his services so his retrenchment is not retrenchment simpliciter but

the retrenchment by way of punishment for raising the issues for the regulation of his services. The management had been threatening the workman for his ouster from the services, if he insisted on the implementation of Labour laws. The workman was not issued charge sheet and no inquiry was held against him so verbal retrenchment/ termination of the workman is against the principles of natural justice. The workman was working against sanctioned post and many posts are lying vacant. He belongs to Schedule Caste category and roster points of SC are lying vacant. The Head Office of the management is at Chandigarh so this Tribunal / Court has got the jurisdiction to entertain and decide the present case. Ultimately, it is prayed that the workman be reinstated with continuity of services, full back wages and along with all other service benefits applicable from time to time.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the staff employed in the corporation consists of two types of employees i.e. regular staff governed under the service laws of the corporation and operational staff. The post of Chowkidar in the Head Office is a regular post in the pay scale of ₹ 4,900-₹10,680/- (initial pay of ₹ 6,950 + G.P. ₹ 1,650/-). The service bye laws of the corporation stipulate that the method of appointment is by direct recruitment with proper prescribed procedure, by promotion, by taking persons on deputation. The vacancy can also be filled by way of transfer from amongst the available staff. In addition thereto, in the event of any immediate emergency, the corporation employs person on DC rates which is purely a stop gap arrangement, purely on temporary basis only from time to time, for short period as per requirement and is need based arrangement. The DC rate employees are paid wages as applicable to the Union Territory / District in which they are employed and terms & conditions of their employment is distinguishable from the aforementioned two categories of employees i.e. regular employee and operational staff. On merits, it is pleaded that the workman was engaged as Chowkidar on DC rates with break in his employment. He was never engaged on a continuous basis of engagement. He was engaged purely on temporary basis only from time to time for a short period as per requirement. The management had not issued any appointment letter and he was engaged under the contingency head. It was a stop gap arrangement only. As per office order No. 5487-92, dated 17.07.2014 one Shri Mahabir Singh—Chowkidar was transferred and posted in the Head Office but unfortunately he expired on 07.01.2015. During the course of his engagement it was found that the workman was not sincere in the discharge of his duty so he was warned many times to mend his way so he was found not fit to continue in service. The management had not violated any section of the ID Act. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Om Parkash as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Rajesh Sharma – SDE (HQ) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and in order to prove the same learned representative for the workman has examined the workman, who deposed that he joined the services of the management on 30.03.2012 and worked continuously without any interruption or break upto 31.01.2015 when the management retrenched the services by passing the verbal order of termination. The post of Chowkidar

is not filled by promotion but was appointed on DC rates. Shri Vidya Dutt retired peon was also deputed on DC rates in the Head Office after the death of Mahavir Singh, who expired on 07.01.2015. He was appointed against regular & sanctioned post. His matriculation certificate is Exhibit 'W3'. He was working as Chowkidar/ Security Guard and fulfils the requisite qualification for the post of Chowkidar. At the time of termination, he was drawing wages as per DC rates applicable in the Union Territory Chandigarh i.e. ₹ 8,587/- per month. He performed his duties upto entire satisfaction of the management. At the time of his appointment he was not issued appointment letter. He was raising issue of regularisation of his services as there are regular nature of posts under the management but instead of regularisation he was terminated from the service which is illegal, unjustified and against the principles of natural justice. He further stated that he performed his duties for two year and ten months. He was not issued any charge sheet and no inquiry was held and he was not given any chance to defend so there is verbal order of termination which is liable to be set aside.

8. The workman also examined Shri Om Parkash, retired employee of the management as AW2, who deposed that the workman was appointed by verbal order dated 30.03.2012 in the head office of the management. The workman was appointed against four sanctioned and vacant post of Chowkidar in the Head Office on DC rates. There are eighty sanctioned posts of Chowkidar in the whole organisation comprising Head Office, four circle offices and sixteen divisions of Punjab. The workman performed his duties upto the entire satisfaction of his superior and immediate incharge. On 31.01.2015, the SDE Head Quarter verbally terminated the services of the workman. Out of 80 sanctioned posts of Chowkidars, 16 No. posts are reserved for schedule castes as per Punjab Government policy and out of 16 No. posts about 50% reserved posts are lying vacant. After retrenchment of the workman, the management posted Shri Sanjiv Kumar as Chowkidar in the Head of the management on transfer from the field against sanctioned post. Some regular Chowkidars have also been appointed on the compassionate ground and one Chowkidar Shri Sanjay Kumar posted at Head Office against sanctioned post at Mohali Phase – I Head Office is shifted from Sector 26, Chandigarh. At the present out of 80 No. sanctioned posts of Chowkidars, about 65 posts are lying vacant including Head Office and Field Offices. The Personnel Department, Government of Punjab had also the management to recruit about 1,258 regular posts belong to Group 'A' to 'D'. Out of total 1,258 posts, the management recruited about 200 employees against the post of Junior Engineer, Junior Draftsmen, Clerks, Drivers, Patwari, Sub-Divisional Engineer etc. in the year 2016 on regular basis.

9. Learned representative for the workman has argued that the workman was appointed by verbal orders dated 30.03.2012 against the vacant post of Chowkidar / Security Guard on DC rates. The workman remained in job for the post of Chowkidar/Security Guard from 30.03.2012 to 31.01.2015 without any break. He was illegally terminated on the post of Chowkidar which is still vacant. He performed his duties to the satisfaction of the superior but he was illegally terminated by the management whereas he fulfils the regular qualification of Chowkidar. He relied upon citation **Tapash Kumar Paul Versus BNSL & Another, 2014(15) SCC 313** and prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for the management has examined Shri Rajesh Sharma– SDE (HQ) as MW1, who deposed that staff employed in the corporation consists of two types of employees i.e. regular employee staff governed under the service e laws of the corporation and operational staff. The post of the Chowkidar in the Head Office is a regular post and the method of appointment is by promotion or by taking persons on deputation and in the event of exigency the corporation employs persons on DC rates, which is purely a stop gap arrangement, purely on temporary basis only for short period. He further deposed that the workman did not work regularly for 240. Original pay rolls are is Exhibit 'R2'. He was never engaged on continuous basis of engagement and his post was on temporary basis. The office had not issued any appointment letter. He was not sincere in the discharge of his duties and warned many times to mend his way.

11. Learned representative for the management has argued that he is a temporary employee and only appointed as stop gap arrangement as per DC rates. He was verbally appointed. No appointment letter has been issued. The workman had not continuously worked for 240 days so he is not entitled for the relief claim for. He prayed for dismissal of the present industrial dispute.

12. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that the workman joined the services of the workman of the corporation and had worked with the management. Now as per averments of the workman he had worked continuously without any interruption and he was not issued any appointment letter. He was appointed against the vacant post. He challenged the verbal order of retrenchment whereas the management is denying all these facts. Now adverting to oral and documentary evidence, it is crystal clear that the workman has failed to prove on record that he was regular employee and continuously worked for the period alleged by him i.e. 30.03.2012 to 31.01.2015. He himself is admitting in his cross-examination that he was not having any proof regarding continuity of work except the cheque of wages paid whereas the management placed on record Exhibit 'R2' which shows whole record of the workman from April 2012 to 30.01.2015 in which the workman remained absent on so many period so his services cannot be counted continuous and without any interruption or break. Further it is also not proved on record that he was a regular employee rather he himself admitted in the cross-examination that he is a temporary employee and there was no termination letter regarding his termination he was only verbally terminated.

13. AW2 Shri Om Parkash also stated in his cross-examination that he is retired employee of the management and no appointment letter was given to the workman at the time of appointment of the workman. He was working on temporarily basis. He did not have the document available with him with regard to continuity of service of the workman i.e. two year and ten months. The workman was appointed as stop gap arrangement on temporary basis and it is correct that there is difference between the workman employed on DC rates and regular employee.

14. In order to prove this fact that the workman was temporary employee the management had examined Shri Rajesh Sharma, who stated in his affidavit that the workman was engaged as Chowkidar on DC rates with breaks in employment. He was never engaged on a continuous basis of engagement and he was engaged purely on temporary basis. He was not issued any appointment and was engaged under contingency head. It was a stop gap arrangement. He was not engaged against the sanctioned post of Helper. Perusal of the documentary evidence it is crystal clear that the workman did not continuously worked for 240 days and he was temporary employee and appointed without any appointment letter and verbal terminated so he cannot be reinstated and he is also not entitled for compensation. Authority relied upon by learned representative for the workman is not applicable in the present case. This issue is decided against the workman and in favour of the management.

RELIEF :

15. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 18.12.2019.

(Sd.) . . . ,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 13th February, 2020

No. 13/1/9712-HII(2)-2019/2630.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 8/2016, dated 18.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

AVTAR SINGH S/O SHRI RAM KUMAR, R/O VILLAGE KAIMWALA, POST OFFICE NAYA GAON, UNION TERRITORY, CHANDIGARH (Workman).

AND

PUNJAB WATER RESOURCES MANAGEMENT & DEVELOPMENT CORPORATION LIMITED, SCO NO. 29, SECTOR 26-D, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he joined the services of the management with effect from 01.06.2013 and worked continuously without any interruption or break in the services till 31.01.2015 when the management retrenched/terminated his services by passing verbal orders of termination. The workman is Matriculate from Punjab School Education Board and having two years ITI Certificate Course in Mechanical Refrigeration and Air Condition. He was working as Artificer/Helper Electrician at the Head Office of the management. He fulfills the requisite qualification for the post of Artificer. At the time of his retrenchment / termination, he was drawing wages as per DC rates applicable in Union Territory, Chandigarh, i.e. ₹ 8,857/- per month. The workman performed his duties up to the entire satisfaction of the management and he was never issued any show cause notice, warning, charge sheet or any other memo to question his work and conduct throughout his service period of 1 year 8 months. At the time of his appointment, the workman was not issued appointment letter by the management. The management did not issue ever designation letter. He was not enrolled under ESI Scheme and Provident fund Scheme. The management was not maintaining proper wages registers and attendance registers, but the workman was paid wages regularly. The workman was raising the issue of regularization of his services as there is sanctioned regular post of Artificer under the management. He was also raising the issue of his enrolment under ESI and Provident fund Schemes. The workman also requested the management to maintain the proper registers of his attendance and payment of wages. Instead of regularization of his services and implementation of the provisions of Labour laws applicable for him, the management started threatening the workman to stop raising the issue of implementation of Labour laws etc. otherwise he will be thrown out of the services of the organization. On 01.02.2015 the workman reached the venue of his duties but he was not allowed to resume his duties and was verbally told that his services are no more required by the management. The workman was appointed against sanctioned post of Helper Artificer. After the retirement of Shri Faqir Singh – Artificer on 30.04.2013 who was a Peon and was attached with Electrician as Helper with Mr. Bhopal Singh, an Electrician in the Head Office of the organization. After some time he was promoted to the post of Artificer against sanctioned vacant post. After the retirement of Shri Bhopal Singh–Electrician on 31.05.2014, the workman was assigned duty of Electrician against the vacant vacancy as he is having 2 years ITI Certificate Course in the Trade of Mechanical Refrigeration and Air Condition. The verbal order of retrenchment/termination of his services is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently *mala fide* on the grounds that the workman performed his duties

for 1 year 8 months continuously and without any interruption or break in the services/duties so he was entitled for notice or retrenchment/notice pay and retrenchment compensation. The management neither served notice of retrenchment nor paid notice pay and retrenchment compensation at the time of passing verbal orders for the retrenchment of his services. The retrenchment order passed against the workman is in violation of Section 25-F of the ID Act, 1947. At the time of his retrenchment/termination, the juniors were retained in the services so verbal order of retrenchment/termination is in violation of Section 25-G of the ID Act. The workman was demanding implementation of Labour Laws to regulate his services so his retrenchment is not retrenchment simplicitor but the retrenchment by way of punishment for raising the issues for the regulation of his services. The management had been threatening the workman for his ouster from the services, if he insisted on the implementation of Labour laws. The workman was not issued charge sheet and no inquiry was held against him so verbal retrenchment/termination of the workman is against the principles of natural justice. The workman was working against sanctioned posts of Artificer and the same post in the organization are still lying vacant and he fulfills the qualification for his appointment as Class-III and Class-IV employee under the kind control of the management. The Head Office of the management is at Chandigarh so this Tribunal/Court has got the jurisdiction to entertain and decide the present case. Ultimately, it is prayed that the workman be reinstated with continuity of services, full back wages and along with all other service benefits applicable from time to time.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the staff employed in the corporation consists of two types of employees i.e. regular staff governed under the service laws of the corporation and operational staff. The post of Artificer in the Head Office is a regular post in the pay scale as recommended by the Punjab Pay Commission and as amended from time to time. The service bye laws of the corporation stipulate that the method of appointment is by direct recruitment with proper prescribed procedure, by promotion, by taking persons on deputation. The vacancy can also be filled by way of transfer from amongst the available staff. In addition thereto, in the event of any immediate emergency, the corporation employs person on DC rates which is purely a stop gap arrangement, purely on temporary basis only from time to time, for short period as per requirement and is need based arrangement. The DC rate employees are paid wages as applicable to the Union Territory/District in which they are employed and terms & conditions of their employment is distinguishable from the aforementioned two categories of employees i.e. regular employee and operational staff. On merits, it is pleaded that the workman was engaged as Artificer on DC rates with break in his employment. He was never engaged on a continuous basis of engagement. He was engaged purely on temporary basis only from time to time for a short period as per requirement. The management had not issued any appointment letter and he was engaged under the contingency head. It was a stop gap arrangement only. As per office order No. 5487-92 dated 17.07.2014 one Shri Sukhbir Singh has been posted as Electrician since 10.11.2014 and is currently also doing the work of Artificer in addition to his own work. During the course of his engagement it was found that the workman was not sincere in the discharge of his duty so he was warned many time to mend his way so he was found not fit to continue in service. The management had not violated any section of the ID Act. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Om Parkash as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Rajesh Sharma—SDE (HQ) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and in order to prove the same learned representative for the workman has examined the workman, who deposed that he joined the services of the management on 01.06.2013 and worked continuously without any interruption or break upto 31.01.2015 when the management retrenched the services by passing the verbal order of termination. The post of Artificial is usually filled through direct recruitment as per Service Bye Laws but before him the post was filled through promotion of Shri Faquir Chand Class – IV Employee i.e. Daftri. The appointment of himself was not a stop gap arrangement and after termination of himself post of Artificial is still lying vacant. He was recruited against the sanction & regular post in the Head Office. His matriculation certificate is Exhibit 'W3'. Copy of ITI certificate course is Exhibit 'W4' and copy of Nation Trade Certificate is Exhibit 'W5'. He performed his duties upto entire satisfaction of the management. At the time of his appointment he was not issued appointment letter. He was raising issue of regularisation of his services as there was a sanction of regular post of Artificial with the management but instead of regularisation he was terminated from the service which is illegal, unjustified and against the principles of natural justice. He further stated that he performed his duties for one year and eight months. He was not issued any charge sheet and no inquiry was held and he was not given any chance to defend so there is verbal order of termination which is liable to be set aside.

8. The workman also examined Shri Om Parkash, retired employee of the management as AW2, who deposed that the workman was appointed by verbal order dated 01.06.2013 in the head office of the management. The workman was appointed against the vacant one sanctioned and vacant post of Artificer in the Head Office on DC rates to assist the Electrician. The workman performed his duties upto the entire satisfaction of his superior and immediate incharge. On 31.01.2015, the SDE Head Quarter verbally terminated the services of the workman. One sanctioned post of Artificer in the Head Office is lying vacant. The workman fulfil the requisite qualification for the post of regular Artificer. The Personnel Department, Government of Punjab had also the management to recruit about 1,258 regular posts belong to Group 'A' to 'D'. Out of total 1,258 posts, the management recruited about 200 employees against the post of Junior Engineer, Junior Draftsmen, Clerks, Drivers, Patwari, Sub-Divisional Engineer etc. in the year 2016 on regular basis.

9. Learned representative for the workman has argued that the workman was appointed by verbal orders dated 01.06.2013 against the vacant post of Artificial in the Head Office on DC rates. The workman remained in job for the post of Artificial from 01.06.2013 to 31.01.2015 without any break. He was illegally terminated on the post of Artificial which is still vacant. He performed his duties to the satisfaction of the superior but he was illegally terminated by the management whereas he fulfils the regular qualification of Artificial. He relied upon citation **Tapash Kumar Paul Versus BNSL & Another, 2014(15) SCC 313** and prayed for reinstatement of the workman with continuity of service and full back wages. .

10. On the other hand, learned representative for the management has examined Shri Rajesh Sharma– SDE (HQ) as MW1, who deposed that staff employed in the corporation consists of two types of employees i.e. regular employee staff governed under the service e laws of the corporation and operational staff. The post of the Artificer in the Head Office is a regular post and the method of appointment is by director recruitment with proper prescribed procedure, by promotion or by taking persons on deputation and in the event of exigency the corporation employs persons on DC rates, which is purely a stop gap arrangement, purely on temporary basis only for short period. He further deposed that the workman did not work regularly for 240. Original pay rolls are is Exhibit 'R2'. He was never engaged on continuous basis of engagement and his post was on temporary basis. The office had not issued any appointment letter. He was not sincere in the discharge of his duties and warned many times to mend his way.

11. Learned representative for the management has argued that he is a temporary employee and only appointed as stop gap arrangement as per DC rates. He was verbally appointed. No appointment letter has been issued. The workman had not continuously worked for 240 days so he is not entitled for the relief claim for. He prayed for dismissal of the present industrial dispute.

12. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that the workman joined the services of the workman of the corporation and had worked with the management. Now as per averments of the workman he had worked continuously without any interruption and he was not issued any appointment letter. He was appointed against the vacant post. He challenged the verbal order of retrenchment whereas the management is denying all these facts. Now adverting to oral and documentary evidence, it is crystal clear that the workman has failed to prove on record that he was regular employee and continuously worked for the period alleged by him i.e. 01.06.2013 to 31.01.2015. He himself is admitting in his cross-examination that he was not having any documentary proof with regard to continuity of work except the cheque of wages paid whereas the management placed on record Exhibit 'R2' which shows whole record of the workman from June 2013 to 30.01.2015 in which the workman remained absent on so many period so his services cannot be counted continuous and without any interruption or break. Further it is also not proved on record that he was a regular employee rather he himself admitted in the cross-examination that he is a temporary employee and there was no termination letter regarding his termination he was only verbally terminated.

13. AW2 Shri Om Parkash also stated in his cross-examination that he is retired employee of the management and no appointment letter was given to the workman at the time of appointment of the workman. He was working on temporarily basis. He did not have the document available with him with regard to continuity of service of the workman i.e. one year and eight months. The workman was appointed as stop gap arrangement on temporary basis and it is correct that there is difference between the workman employed on DC rates and regular employee.

14. In order to prove this fact that the workman was temporary employee the management had examined Shri Rajesh Sharma, who stated in his affidavit that the workman was engaged as Artificial on DC rates with breaks in employment. He was never engaged on a continuous basis of engagement and he was engaged purely on temporary basis. He was not issued any appointment and was engaged under contingency head. It was a stop gap arrangement. He was not engaged against the sanctioned post of Artificial. Perusal of the documentary evidence it is crystal clear that the workman did not continuously worked for 240 days and he was temporary employee and appointed without any appointment letter and verbal terminated so he cannot be reinstated and he is also not entitled for compensation. Authority relied upon by learned representative for the workman is not applicable in the present case. This issue is decided against the workman and in favour of the management.

RELIEF :

15. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 18.12.2019.

(Sd.) . . . ,

(ANSHUL BERRY),

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

BAR COUNCIL OF PUNJAB AND HARYANA CHANDIGARH

Notification

The 6th February, 2020

No. BCPH/2020/12223.—It is hereby notified that Sh. Karanjit Singh, Advocate, Punjab and Haryana High Court, Chandigarh and Member Bar Council, has been elected unopposed as Chairman of the Bar Council of Punjab and Haryana in its meeting held on 5th February, 2020, under the Advocates Act, 1961 (Act 25 of 1961) and rules framed by Bar Council of Punjab and Haryana under section 15 of the Act.

His complete address is as under :—

**MR. KARANJIT SINGH, ADVOCATE,
CHAIRMAN**

65, Sec. 77, Punjab Judges Enclave, Mohali
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Email:- adv.karanjitsingh@gmail.com

Deputy Secretary.

BAR COUNCIL OF PUNJAB AND HARYANA CHANDIGARH

Notification

The 6th February, 2020

No. BCPH/2020/12224.—It is hereby notified that Sh. Surinder Dutt Sharma, Advocate, District Courts, Faridabad, Haryana and Member Bar Council, has been elected unopposed as Vice- Chairman of the Bar Council of Punjab and Haryana in its meeting held on 5th February, 2020, under the Advocates Act, 1961 (Act 25 of 1961) and rules framed by Bar Council of Punjab and Haryana under section 15 of the Act.

His complete address is as under :—

**MR. SURINDER DUTT SHARMA, ADVOCATE,
VICE-CHAIRMAN**

10/37, Barh Mohalla, Faridabad
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Deputy Secretary.

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